APPEAL NO. 022761
FILED DECEMBER 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on September 24, 2002. The hearing officer determined that, as a result of the injury sustained on _____, the appellant (claimant) did not have disability from April 10, 2002, through the date of the hearing. The claimant appeals this determination submitting new documentation. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the medical documents, which are dated October 14, 2002, that are attached to the claimant's request for review. Accordingly, we decline to consider these documents on appeal.

Whether the claimant had disability was a factual question for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant argues on appeal that it was improper for the hearing officer to review the surveillance video outside the claimant's presence, as he was unable to make comments relating to it. The record reflects that the hearing officer advised the

parties that she would view the video after the hearing and the claimant did not object to the delayed viewing or request that the video be viewed during the hearing. The record additionally reflects that the claimant presented a considerable amount of testimony relating to the video. We perceive no error in the hearing officer viewing the video without the parties being present.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **SOUTHERN VANGUARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MICHAEL E. DITTO
2727 TURTLE CREEK BLVD.
DALLAS, TEXAS 75266.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge